

AN ORDINANCE 2006-05-18-0598

APPROVING AN AGREEMENT WITH THE LANDA GARDENS CONSERVANCY (LGC) FOR LGC TO CONSTRUCT IMPROVEMENTS AT THE LANDA BRANCH LIBRARY GROUNDS, INCLUDING THE CONSTRUCTION OF A PAVILION, LIGHTING, IRRIGATION, LANDSCAPING AND HARDSCAPE, AND CONTINUED GROUNDS MAINTENANCE IN ACCORDANCE WITH THE LANDA GARDENS MASTER PLAN, WITH THE CITY'S CONTRIBUTION BEING \$70,000.00 FROM NAMP FUNDS FOR THIS ESTIMATED \$1,000,000.00 LGC FUNDED PROJECT, AND ESTABLISHING A DEDICATED FUND CONSISTING OF INCOME FROM THE RENTAL OF THE PAVILION TO SUPPORT GROUNDS MAINTENANCE.

* * * * *

WHEREAS, the Landa Gardens Conservancy (LGC) was established as a 501(c)(3) non-profit in August 2004 for the purpose of improving the five acre grounds of the Landa Branch Library; and

WHEREAS, the LGC commissioned a Landa Gardens Master Plan that provides for the creation of user friendly spaces, landscaped beds, improved lighting, an irrigation system and additional and improved parking; and

WHEREAS, the Library Board of Trustees approved the Master Plan and the Pavilion on August 24, 2005, the Historic and Design Review Commission approved the Pavilion on September 7, 2005 and the Master Plan on November 16, 2005, and the Library Board of Trustees approved the Landa Gardens Master Plan Agreement on April 26, 2006; and

WHEREAS, approval of this ordinance authorizes the execution of an agreement between the Landa Gardens Conservancy (LGC), and the City of San Antonio to implement the Landa Gardens Master Plan; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager, or her designee is hereby authorized to execute an agreement with the Landa Gardens Conservancy (LGC) for LGC to construct improvements at the Landa Branch Library grounds, including the construction of a pavilion, lighting, irrigation, landscaping and hardscape, and continued grounds maintenance in accordance with the Landa Gardens Master Plan. A copy of the agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as Attachment I.

SECTION 2. The revenue collected from the rental of the Valero Energy Corporation Pavilion will be deposited in Fund 29603030, entitled Landa Garden Pavilion Fund, and Internal Order 204000000537, entitled Valero Energy Pavilion. Expenditures from such fund shall be governed by the terms of the Agreement set forth herein.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

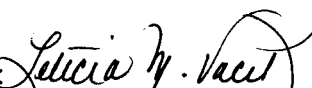
SECTION 4. This ordinance shall be effective on and after May 28, 2006.

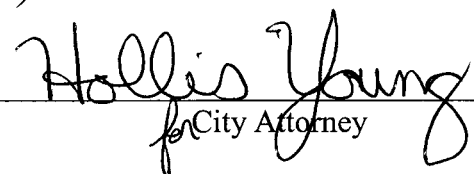
PASSED AND APPROVED this 18th day of May, 2006.



M A Y O R

PHIL HARBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney

Agenda Voting Results

Name: 10.

Date: 05/18/06

Time: 09:51:58 AM

Vote Type: Multiple selection

Description: An Ordinance approving an agreement with the Landa Gardens Conservancy (LGC) for LGC to construct improvements at the Landa Branch Library grounds, including the construction of a pavilion, lighting, irrigation, landscaping and hardscape, and continued grounds maintenance in accordance with the Landa Gardens Master Plan, with the City's contribution being \$70,000.00 from NAMP funds for this estimated \$1,000,000.00 LGC funded project, and establishing a dedicated fund consisting of income from the rental of the pavilion to support grounds maintenance. [Presented by Ramiro S. Salazar, Director, Library; Frances A. Gonzalez, Assistant City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1	Not present			
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

AGREEMENT

This Agreement ("Agreement") dated as of the ____ day of _____, 2006 (the "Effective Date"), is made and entered into by and between the LANDA GARDENS CONSERVANCY ("LGC"), a Texas non-profit corporation, and the CITY OF SAN ANTONIO ("City"), a Texas political subdivision and home-rule municipality of the State of Texas, acting by and through the SAN ANTONIO PUBLIC LIBRARY ("Library"), the Board of Trustees of the Library ("Board") and the City Manager of the CITY OF SAN ANTONIO pursuant to Ordinance No. _____ (the "Ordinance") adopted by the City Council of the City ("City Council") on _____, 2006.

WITNESSETH:

WHEREAS, Library owns that certain real property (the "Property") and all improvements thereon (the Property, together with all improvements currently located thereon is referred to herein as the "Premises"), known as Landa Library, located at 233 Bushnell, San Antonio, Bexar County, Texas, which includes the approximately five acres that surround the Landa Library, the Valero Energy Corporation Pavilion, and the playground area, and being more particularly described on Exhibit "A" attached hereto and incorporated herein by reference for all purposes ("Grounds"). The Grounds shall not include Landa Library or the attached buildings, or any other structure or item that LGC, Library, City and Board exclude from this Agreement either herein or by amendment to this Agreement;

WHEREAS, LGC desires to enhance the Grounds by developing and implementing a master planned project known as Landa Gardens. The Master Plan for Landa Gardens is attached hereto as Exhibit "B" and incorporated herein by reference for all purposes, and includes, but is not limited to, the Valero Energy Corporation Pavilion (such Valero Energy Corporation Pavilion being more particularly described on Exhibit "C" attached hereto and incorporated herein by reference for all purposes), walking paths, a children's planting area, an irrigation system, lighting, landscaped beds, and reconfigured parking areas and driveway (the "Master Plan," as may be amended from time to time);

WHEREAS, Library desires that the Grounds be fully utilized and beautified for the enjoyment of the community;

WHEREAS, the Master Plan and the Valero Energy Corporation Pavilion were approved by the San Antonio Library Board of Trustees on August 24, 2005;

WHEREAS, the plans for Valero Energy Corporation Pavilion were approved by the City of San Antonio Historic and Design Review Commission on September 7, 2005;

WHEREAS, the Master Plan was approved by the City of San Antonio Historic and Design Review Commission on November 16, 2005;

WHEREAS, LGC and Library desire to work cooperatively and in partnership to beautify the Grounds and to provide a lovely addition of public space to the community; and

WHEREAS, Library acknowledges the public benefit to be received by the completion of Landa Gardens;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, and for good, fair and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by LGC, Library, City, Board and City Manager; LGC, Library, City, Board and City Manager agree as follows:

I. Phase One

1. LGC shall have the right to construct Landa Gardens in phases. Phase One shall be constructing the Valero Energy Corporation Pavilion.
2. Upon execution of this Agreement and delivery to the Library Director of LGC's insurance certificate in the amount specified in Section II, Paragraph 19 with the City as an additional insured and documentation of the proper and necessary permits, and upon the Library Director having reviewed and approved any and all construction plans for Phase One, the Library Director shall provide written authorization to LGC to commence work on the Valero Energy Corporation Pavilion. Library Director's review shall not be limited in any way, except for the following: Library Director shall not be allowed to request changes to the construction plans for Phase One which are inconsistent with the Master Plan or with the artistic vision contained therein. In the event the construction plans are not consistent with the Master Plans previously approved by the Board and the City's Historic and Design Review Commission, as determined by the City's Historic Preservation Officer, the Master Plan shall be presented to the Board and the City's Historic and Design Review Commission for their respective further review and approval.
3. LGC, Library, City, Board and City Manager agree that all of Section II of this Agreement is applicable to the construction and maintenance of the Valero Energy Corporation Pavilion.
4. Upon completion of the Valero Energy Corporation Pavilion, the Library shall formally acknowledge and accept in writing the Pavilion as a gift from LGC.
5. Library and LGC anticipate that upon completion of the Valero Energy Corporation Pavilion, the Library will charge for rental of the Pavilion pursuant to rental policies as adopted by Library from time to time. Said charge shall include a fee for cleaning the Valero Energy Corporation Pavilion after each such rental. LGC and City agree that the rental income from the Pavilion shall be placed in a Library fund dedicated to Landa Library for the maintenance of the Grounds and

as a supplement to the funds that LGC spends for such purpose. Library shall consult with LGC in the expenditure of such funds and agrees to budget such funds on an annual year basis.

II. Phase Two

1. Phase Two of Landa Gardens shall be the construction of the remaining items of the Master Plan, to include the lighting, irrigation, landscaping and hardscape.
2. Upon (i) execution of this Agreement, (ii) LGC obtaining the collected funds as specified in Section II, paragraph 3, (iii) delivery of LGC's insurance certificate in the amount specified in Section II, paragraph 19 with the City as an additional insured and (iv) documentation of the proper and necessary permits to the Library Director, (v) upon the Library Director having reviewed and approved any and all construction plans for Phase Two, the Library Director shall provide written authorization to LGC to commence work on Phase Two of the Master Plan, subject to Section II, paragraph 7. Library Director's review shall not be limited in any way, except for the following: Library Director shall not be allowed to request changes to the construction plans for Phase Two which are inconsistent with the Master Plan or with the artistic vision contained therein. In the event the construction plans are not consistent with the Master Plans previously approved by the Board and the City's Historic and Design Review Commission, as determined by the City's Historic Preservation Officer, the Master Plan shall be presented to the Board and the City's Historic and Design Review Commission for their respective further review and approval.
3. The cost to construct the Master Plan, excluding the Valero Energy Corporation Pavilion, is \$850,000.00. Construction of the Master Plan, excluding the Valero Energy Pavilion, may commence, subject to other provisions of this Agreement, upon LGC collecting \$680,000 for the implementation of the Master Plan.
4. Pursuant to this Agreement, LGC has the Library's permission to contract with the necessary contractors to carry out the work specified in the Master Plan. Compliance with governmental purchasing and procurement statutes and local ordinances is not necessary because public funds are not being used. LGC will be responsible for paying all contractors. LGC shall be solely responsible for compliance with all federal, state, and local laws that are applicable to this Agreement.
5. LGC is hereby granted a limited right of ingress and egress to the Grounds as part of any authorization to commence construction issued in writing by the Library Director, or his designated representative. The limited right of ingress and egress shall be limited by the immediate need of LGC and shall be subject to reasonable day to day regulation and control by the Library Director to ensure that operation of Landa Library is not unreasonably impaired. The immediate need

during construction will require that from the commencement of construction until the completion, LGC shall have the right of ingress and egress to the Grounds. LGC shall also have a right of ingress and egress to maintain the Grounds, such right subject to the reasonable day-to-day regulation and control by the Library Director.

6. LGC, or its general contractor, shall be in direct supervisory control of any persons accessing the Grounds as part of this project.

7. All construction and maintenance for Landa Gardens will be subject to the control and regulation of the Library Director in order to minimize the disruption of the normal operations of Landa Library.

8. At the conclusion of the construction, or any phase of the construction, LGC shall present to City as-built construction drawings.

9. In recognition of the public benefit to be provided by Landa Gardens, City, to the extent allowed by law, hereby waives all City permit and inspection fees, but not the required inspections and permits associated with the implementation of the Master Plan.

10. City shall maintain insurance for (or self-insure) the Grounds as part of its regular insurance program.

11. Library understands that LGC will acknowledge its donors by having small plaques appropriately placed throughout Landa Gardens and a large permanent plaque placed in or on the Landa Library in an appropriate place. The size, design and placement of any such plaques will be subject to the approval of the Library Director and any applicable City boards and commissions.

12. LGC will raise money for a Landa Gardens endowment for the continued maintenance and improvement of Landa Gardens. These funds will be managed by LGC and spent at the discretion of the LGC, provided, however, that on an annual basis LGC will provide to the Library Director a schedule of maintenance that will be performed during the year, subject to written supplementation by LGC if circumstances warrant. The scheduling of all maintenance work, whether routine or not, shall be subject to the discretion of the Library Director. Any future projects or improvements involving Landa Gardens, beyond ordinary maintenance, shall be subject to the approval of the Board regardless of whether the funds come from the Landa Gardens endowment.

13. For the term of this Agreement, LGC will have the responsibility to maintain the landscaping improvements made on the Grounds. This includes normal cutting and trimming of grass and shrubs, replacing dead or diseased plants, and fertilizing. The scheduling of all such maintenance shall be subject to the direction of the Library Director. Library shall have full authority to undertake

any necessary maintenance which the Library Director determines is necessary for proper maintenance of the Grounds.

14. Library agrees to provide water to the Grounds for irrigation use subject to City water conservation policies as adopted from time to time. Library shall pay for any utilities provided to the Grounds.

15. Library agrees to keep the sprinkler system regulated and in good operating condition at all times, clean up trash, remove graffiti, replace light bulbs, and keep the Grounds maintained to a reasonable standard as determined by Library.

16. Notwithstanding this Agreement, the City shall, subject to the City's normal annual budgeting and appropriations process, continue to allocate money for the Grounds and Landa Library. Said funds shall be used to supplement any funds provided by LGC for the Grounds.

17. Upon completion of Landa Gardens, the Library shall formally acknowledge and accept in writing the improvements made to the Grounds by LGC.

18. All contractors that LGC directly contracts with for work on the Grounds, whether during construction phases, or during any maintenance work, will be required to carry insurance, and performance and payment bonds. The type and amount of insurance required for the contractors will be the same as LGC is required to purchase under paragraph 19 of this Agreement, except that the contractors that are performing routine maintenance will only be required to carry insurance in an amount that is equal to the amount of the contract under which the work is performed. The performance and payment bonds shall be for the amount of the specific contract entered into between the contractor and LGC. If the work is for less than \$25,000.00, a performance and payment bond will not be required.

19. LGC agrees that it shall purchase insurance in an amount specified in Texas Charitable Immunity and Liability statute, Texas Civil Practice and Remedies Code, Section 84.007.

21. At no time shall LGC cause, permit or allow any liens, leases, pledges or other encumbrances to be placed on or attached to the buildings or the Property, nor permit or allow any liens, leases, pledges or other encumbrances to be attached to any of the funds it obtains for the project.

21. LGC agrees that it shall continue to maintain its 501(c)(3) non-profit status during the term of this Agreement.

22. It is the sole responsibility and obligation of LGC to maintain adequate records and accounting of all funds it receives in connection with Landa Gardens. LGC assumes all liability for any and all funds it receives in connection with the

project. Notwithstanding the foregoing, however, LGC agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received in connection with Landa Gardens. LGC further agrees to retain for 7 (seven) years all records, documents, reports and written accounting policies and procedures pertaining to the receipt and expenditure of funds for or in connection with the project or all other terms of this Agreement, and make available to City at all reasonable times such records, documents, reports and written accounting policies and procedures. LGC agrees to provide City with any data determined by City to be necessary to be received in connection with the Property, Landa Gardens or this Agreement.

23. City shall assume no liability and no expense by reason of this Agreement or any activities by LGC, and LGC shall be liable for any damages caused to the Property, the building or City by reason of any of the activities of LGC. Any such damages to the Property, the building or City caused or permitted by LGC will be promptly repaired and otherwise made whole by LGC. Further, City shall not be obligated nor liable under this Agreement to any party for payment of any monies or provision of any goods or services.

24. LGC covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, including cost of defense, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to LGC's activities under this AGREEMENT, including any acts or omissions of LGC, any agent, officer, director, representative, employee, consultant or subcontractor of LGC, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LGC AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractually or otherwise, to any other person or entity. LGC shall promptly advise the CITY in writing of any claim or demand against the CITY or LGC known to LGC related to or arising out of LGC's activities under this AGREEMENT.

25. It is expressly understood and agreed that LGC is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions.

26. LGC agrees to cooperate with City, at no charge to City, to satisfy, to the extent required by law, any and all requests for information received by City under the Texas Public Information Act or related laws pertaining to this Agreement.

27. Any breach or violation by either party to this Agreement of the provisions herein contained shall give rise immediately to the right on the part of the non-violating party, at its option, upon thirty (30) days' written notice to violating party, unless such breach or violation is cured prior to the expiration of the notice period, to cancel this Agreement or to seek any remedy which now is or may be provided by law, whether or not stated herein. No waiver by either party of a breach or violation shall be construed or held to be a waiver of any succeeding or preceding breach or violation of the same or any other provision herein contained.

28. The term of this Agreement is three (3) years, commencing on the adoption of the Ordinance. LGC shall have the option to renew and extend the term of this Agreement for four (4) additional five-year (5) terms. The renewal shall be automatic, unless LGC provides City with written notice of LGC's intent not to renew within thirty (30) days of the end of the then current term.

29. Notwithstanding any other provision of this Agreement, any and all activity on the Grounds, whether for construction, maintenance or any other reason, by LGC or its contractors shall be scheduled and coordinated through the Library Director or his designated representative.

30. Notwithstanding any other provision of this Agreement, LGC does not accept responsibility to maintain the sidewalks or hardscape (driveway, parking areas, or curbing).

31. The Library, City, and Board shall not make plans for the use of the Grounds that would alter the Master Plan without consulting LGC.

32. All notices to be given under this Agreement shall be in writing, and shall either be personally served against written receipt therefore or given by certified mail or registered mail, return receipt requested, postage prepaid and addressed to the proper party at the address which appears below, or at such other address as the parties hereafter designate. All notice given by mail shall be deemed to have been given at the time of deposit in the United States mail and shall be effective from such date.

If to City: San Antonio Public Library
Attn: Director
600 Soledad
San Antonio, Texas 78205

With copy: City Clerk
P.O. Box 839966
San Antonio, Texas 78283-3966

If to LGC President
P.O. Box 12243
San Antonio, Texas 78212

33. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral arguments between the parties respecting the subject matter of this Agreement.

34. All references to Master Plan in this Agreement shall mean the Master Plan as attached hereto as Exhibit A and any amendment to the Master Plan that is approved by LGC, the Board and any applicable City boards or commissions.

Executed in duplicate this _____ day of _____, 2006.

CITY:

Frances A. Gonzalez
Assistant City Manager
City of San Antonio

Approved as to Form:

City Attorney

LANDA GARDENS CONSERVANCY:

Jill Torbert
President of Landa Gardens Conservancy

City of San Antonio Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.

(1) Identify any individual or business entity that is a party to the discretionary contract:

Sanda Gardens Conservancy

(2) Identify any individual or business entity which is a partner, parent or subsidiary business entity, or any individual or business entity identified above in Box (1):



No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a subcontractor on the discretionary contract:



No subcontractor(s); or

List subcontractors:

Metropolitan Contracting Company
Carlos Cortez

(4) Identify any lobbyist or public relations firm employed by any party to the discretionary contract for purposes related to seeking the discretionary contract:



No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

¹ A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3).

☒ No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

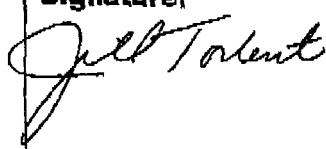
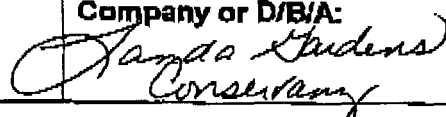
(5) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), if "conflicts of interest" by participating in official action relating to the discretionary contract.

☒ Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature: 	Title: President Company or D/B/A:  Conservancy	Date: 5-3-06
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² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.